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TO RUEHC/SECSTATE WASHDC IMMEDIATE 4412
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RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE
RUEHC/SECSTATE WASHDC IMMEDIATE 4413

C O N F I D E N T I A L SECTION 01 OF 02 MANILA 005109

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E.O. 12958: DECL: 12/30/2016

TAGS: PREL MARR CASC RP

SUBJECT: EMBASSY REGAINS CUSTODY OF LCPL. SMITH

REF: A. MANILA 5098

1B. MANILA 5083

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Classified By: A/DCM Scott Bellard, reasons 1.4 (b) and (d)

11. (U) Lance Corporal Daniel J. Smith returned to the custody of the U.S. Embassy at approximately 11:30 p.m. local time on December 29, escorted by a team from the Regional Security Office as well as the Philippine National Police. He will remain confined in the same quarters in the Rowe Building on the Chancery grounds that he had occupied before his December 4 conviction by the Makati Regional Court, which ordered his temporary custody in the Makati City Jail. Representatives from III MEF will remain with LCpl. Smith in these quarters. The ACS chief contacted the family of LCpl. Smith upon his return to the Embassy.

12. (U) On behalf of Secretary of Interior and Local Government Puno, U/S Corpus turned over custody to the RSO at the Makati City Jail at approximately 10:45 p.m., providing a memorandum entitled "Turn-over of custody of LCpl. Daniel J. Smith to US Custody," which noted that the "living person in good physical condition of Lance Corporal Daniel J. Smith, US Marine Corps, is hereby respectfully turned over to the custody of the U.S. Government thru the representatives of the U.S. Embassy in Manila, Philippines."

13. (C) U/S Corpus also provided a letter from Secretary Puno to the Ambassador that included a lengthy opinion by Justice Secretary Raul Gonzales "affirming that the custody of Lance Corporal Daniel Smith rightfully belongs to the United States Government pending completion of all judicial proceedings, including his appeal to the higher Philippine Courts," and noting that "based on the foregoing opinion of the Philippine Government's Legal Counsel, the Bureau of Jail Management and Penology, an agency of the Department of the Interior and Local Government, which administers the Makati City Jail, stands ready to turn over custody of L/Cpl Smith to the U.S. Embassy in accordance with the Visiting Forces Agreement." The Justice Secretary's brief cited a 2000 Philippine Supreme Court decision acknowledging the responsibility of the Philippine government to uphold international obligations despite "violations committed by any branch or subdivision of its government or any official thereof." It reviewed relevant provisions on custody in Article V from the VFA. It highlighted the motions to the Court of Appeals prepared by the Philippine Solicitor General and emphasized that the Court had already "noted" -- without objection -- agreement between the U.S. Ambassador and the Secretary of Foreign Affairs (ref b) on the custody of LCpl.

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Smith, thereby complying with the ruling of the Regional

Trial Court judge.

14. (C) Executive Secretary Ermita confirmed to the Ambassador late afternoon on December 29 that this solution was in final stages and would receive the explicit blessing of President Arroyo.

15. (SBU) The transfer was a major media story late on December 29 and in newspapers on December 30, with the private prosecutor in the rape case already claiming these actions could be grounds for impeachment charges. The story broke late enough that there has been no editorial comment as of yet. There was a short demonstration by about 50 protesters from women's groups near the Embassy on the morning of December 30, but police handled them with restraint and they dispersed quietly.

16. (C) Comment: This bold and welcome step by the Philippine Government reflected its deep commitment to the Visiting Forces Agreement and to its respect for its international obligations, despite frustrations over judicial decisions (or lack thereof). The legal reasoning of Justice Secretary Gonzales seems clear, but is unlikely to placate

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opponents of the Administration or supporters of the complainant in the rape case. The timing of the transfer was undoubtedly with the expectation that the long holiday weekend would muffle criticism, at least temporarily, and to enable the Philippine Government to end the year with a clean resolution of this issue. DFA contacts also suggested that the Government in particular wished to clear up this problem before Vice President de Castro's attendance at the funeral of late President Ford on January 2.

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